

EXHIBIT 3

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION

CATHERINE ALEXANDER,

Plaintiff,

vs.

No. 3:18-cv-966-MJR-DGW

TAKE-TWO INTERACTIVE SOFTWARE, INC.,
2K GAMES, INC.; 2K SPORTS, INC.; WORLD
WRESTLING ENTERTAINMENT, INC.;
VISUAL CONCEPTS ENTERTAINMENT;
YUKE'S CO., LTD.; AND YUKE'S LA, INC.,

Defendants.

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VIDEOTAPED DEPOSITION OF RYAN CLARK

September 12, 2019

St. Louis, Missouri

Reported by:

Pamela Watson Harrison

Job no: 26039

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1 Q. Have you ever worked on a case involving
2 tattoos?

3 A. No.

4 Q. Are you familiar with the -- or familiar
5 at all with the video game design process?

6 A. Just generally from -- just generally,
7 yes.

8 Q. I mean, and how are you generally
9 familiar with the video game design process?

10 A. Just from what I've read from the other
11 experts involved in this case and very briefly
12 recall seeing -- I don't know where it was, but
13 how they -- video game industry is able to mimic
14 the movement of particular players, characters
15 by -- you know, they hook them up and a 3D imaging
16 is the general idea or sense of how it's done.

17 Q. Have you ever -- prior to this lawsuit,
18 have you ever studied the video game industry?

19 A. No.

20 Q. Have you ever studied the video game
21 design process?

22 A. No.

23 Q. Have you ever researched the video game
24 design process?

25 A. No.

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1 Q. Have you ever researched design choices
2 that video game developers make?

3 A. No.

4 Q. Have you ever researched the reasons for
5 making one design choice versus another?

6 A. No.

7 Q. Do you have any experience in -- do you
8 have any experience with the video game design
9 process?

10 A. No.

11 Q. So to be clear, you do not have any
12 experience in designing video games?

13 A. That's correct.

14 Q. You do not have any experience -- you do
15 not have any -- prior to this lawsuit, you do not
16 have any familiarity with the video game design
17 process other than playing them and watching them?

18 A. And the one -- the mention -- or the
19 reference I had of seeing -- I don't know if it
20 was a special or whatever, where they showed how
21 the characters, the athletes, how they mimic their
22 moves. And I don't remember -- I just remember
23 seeing a particular athlete hooked up on a
24 treadmill, and they had, like, things stuck to
25 them and they were -- they had a big screen. But

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1 THE VIDEOGRAPHER: This ends media
2 number 1. We're off the record. It is 9:56 a.m.

3 (Off the record from 9:56 a.m.
4 until 10:05 a.m.)

5 THE VIDEOGRAPHER: This begins media
6 number 2. We're back on the record. It is
7 10:05 a.m.

8 QUESTIONS BY MR. ILARDI:

9 Q. Mr. Clark, before we broke, we were
10 talking earlier this morning about the fact that
11 you have played video games before?

12 A. Correct.

13 Q. And do you enjoy playing them?

14 A. Yes.

15 Q. Are video games a form of art?

16 A. I don't have an opinion on that. I
17 don't know what you mean by that.

18 Q. You do have opinions on whether or not
19 realism is important to consumers of video games;
20 is that correct?

21 A. Based off of Dr. Zagal's report. And in
22 realism being a driver of consumer demand and
23 essentially based off of what Dr. Zagal has opined
24 to.

25 Q. You're not offering any of your own

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1 opinion on whether realism drives consumer
2 demands?

3 A. No.

4 Q. And do you offer any opinions beyond
5 what Mr. Zagal talks about, about the video game
6 industry?

7 A. Well, my opinions are separate from
8 Dr. Zagal's opinions, and I believe where it is --
9 there's some overlap is on the tattoos and
10 Mr. Malackowski's opinion that zero profits and
11 sales are attributable to, you know, the tattoos.

12 Q. You do offer opinions on the concept of
13 whether the profits are attributable to the
14 tattoos?

15 A. Yes.

16 Q. To be clear, when I say "the," I mean
17 you offer opinions on whether Take-Two's profits
18 are attributable to the tattoos?

19 A. That's correct. I agree with
20 Mr. Malackowski that zero -- or zero contribution
21 of the accused tattoos.

22 Q. In your opinion, there is some
23 contribution of the accused tattoos to Take-Two's
24 profits in selling WWE 2K?

25 A. Yes.

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1 A. Correct.

2 Q. And here you have declined to provide
3 any percentage?

4 A. I have not, that's correct. I have not
5 provided -- I haven't declined. I have disagreed
6 with Mr. Malackowski that it is zero percent.

7 Q. That means, in your opinion, if
8 Mr. Orton's character was shown without his
9 tattoos, that would negatively impact Take-Two's
10 profits?

11 A. Yes.

12 Q. And people would buy -- people would
13 buy -- let me rephrase that.

14 There would be less sales of the accused
15 video games if Mr. Orton was shown without the
16 tattoos in the accused video games?

17 A. That's not my opinion. That's
18 Dr. Zagal's opinion that there would be less
19 sales. But it seems like a reasonable opinion and
20 a reasonable basis for that, I believe.

21 Q. There's some number of consumers who
22 otherwise would have purchased WWE 2K who now
23 would not purchase it if Mr. Orton was not shown
24 with his tattoos?

25 A. I think that is a true statement

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1 because, essentially, what is being quantified
2 is -- what the other experts are trying to
3 quantify is what that profit contribution
4 percentage is. And if it's something greater than
5 zero, then what's been concluded is that there
6 is -- copyrighted work is contributing to the
7 profits of the company and if -- you know, profits
8 of company of sales and expenses. I think that's
9 an accurate statement.

10 Q. Are there some people who buy WWE 2K
11 because of the tattoos that appear on Mr. Orton?

12 A. So, again, you're getting outside of my
13 area of my opinions.

14 Q. Well, the way I read your opinions, I
15 don't think we are -- unless you're not going to
16 offer the opinions in Section 3D, you do offer
17 opinions that the design choices, including the
18 tattoos, had an impact on profits, don't you?

19 A. Yes, based off of the expert in the
20 video game industry, based off of some survey data
21 from Take-Two's video game surveyor. There was
22 some percentage of the consumers that valued, you
23 know, the realism of characters; and that's
24 something that I'll leave to those experts to talk
25 about.

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1 Orton's tattoos?

2 A. It's not my opinion. It's in the survey
3 that nearly 1 percent of respondents identified
4 the depiction of Mr. Orton's appearance as one of
5 the reasons they bought the WWE 2K game.

6 Q. Your opinion was that the profits
7 attributable are not zero?

8 A. That's correct.

9 Q. My question is: Does that mean there's
10 at least -- at least one person who has bought the
11 game who did so because of Mr. Orton's tattoos?

12 A. I don't have that information. And my
13 opinion is also based off of Dr. Zagal's opinion
14 related to the need for increased realism of the
15 game to avoid negative criticisms from the
16 consumers, and that's a real deal that there's
17 online platforms that the consumers can voice
18 their opinions about the lack of realism of the
19 games. And so that's his area of expertise. I'm
20 simply pointing out that -- I simply disagree with
21 Mr. Malackowski that there's zero contribution of
22 the accused tattoos to the 2K's profits.

23 Q. So I'm just trying to understand. Does
24 that mean in your opinion there's at least one
25 person that purchased the game because of